

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 5:21-cv-00044-D

CUMIS INSURANCE SOCIETY, INC.,)

Plaintiff,)

v.)

NATIONWIDE MUTUAL FIRE)
INSURANCE COMPANY,)

Defendant.)
_____)

**DEFENDANT’S
MOTION TO DISMISS**

Fed. R. Civ. P. 12(b)(6)

COMES NOW Defendant Nationwide Mutual Fire Insurance Company (“Nationwide”), by and through the undersigned counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and moves this Court to dismiss Count II of Plaintiff’s Complaint for failure to state a claim upon which relief may be granted. In support of this motion, Defendant Nationwide shows the following:

1. Plaintiff CUMIS Insurance Society, Inc. (“CUMIS”) filed the present action seeking damages for breach of contract and equitable subrogation against Defendant. Specifically, Plaintiff alleges that it issued a policy of insurance that paid benefits to its insured, Local Government Federal Credit Union (“LGFCU”). Plaintiff alleges that Defendant Nationwide issued a policy of insurance that had primary coverage for the same benefits that Plaintiff paid to LGFCU. Plaintiff seeks reimbursement from Defendant Nationwide of the amounts that it paid to LGFCU under its policy. In this action, Plaintiff asserts two claims against Defendant: (1) breach of contract and equitable subrogation; and (2) unfair trade practices. Plaintiff seeks reimbursement of the amounts it paid to LGFCU, treble damages, interest, attorneys’ fees and costs.

2. In the Complaint, Plaintiff alleges that LGFCU assigned its rights under the policy of insurance issued by Nationwide to CUMIS. (Complaint [DE 1-1], ¶ 21) Plaintiff also alleges that it is subrogated as a matter of law to the rights of LGFCU. (Complaint [DE 1-1], ¶ 22)

3. In Count II of the Complaint, Plaintiff asserts a claim for unfair trade practices in violation of N.C. Gen. Stat. §75-1.1, *et seq.*, on the grounds that Nationwide engaged in conduct that violated N.C. Gen. Stat. §58-63-15(11). (Complaint [DE 1-1], ¶¶ 46-60)

4. Plaintiff fails to state a claim for unfair trade practices because:

- (a) Claims for unfair trade practices, and claims based on actions taken in violation of N.C. Gen. Stat. §58-63-15(11) are not assignable as a matter of law.
- (b) Plaintiff does not have an independent claim for unfair trade practices as a matter of law because Plaintiff is not an insured under Defendant's policy and Plaintiff and Defendant are not in privity.
- (c) Plaintiff's claims amount to no more than a disagreement between Plaintiff and Defendant regarding the interpretation of the terms of the policy of insurance issued by Nationwide. Such claims cannot form a basis for a claim of unfair trade practices as a matter of law.
- (d) Even if Plaintiff can assert an unfair trade practices claim against Defendant, which Defendant disputes, Plaintiff failed to allege all the necessary elements of its claim and therefore the claim should be dismissed as a matter of law.

In further support of this motion, Defendant relies on its Memorandum in Support of its Motion to Dismiss, filed contemporaneously herewith, and all other matters of record.

WHEREFORE, Defendant Nationwide Mutual Fire Insurance Company respectfully requests that this Court grant its motion to dismiss and dismiss with prejudice Count II of the Complaint for failure of Plaintiff to state a claim upon which can be granted.

Respectfully submitted, this the 15th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing DEFENDANT’S MOTION TO DISMISS has been electronically filed with the Clerk of Court using the CM/ECF system and has been served on all counsel of record through the CM/ECF system:

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This the 15th day of February, 2021.

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